S.B. CIVIL MISC. APPEAL NO.67/2007.
(Smt. Purnima & Ors. Vs. Bahadur Singh & Anr.)

Date of Order :: 9th January 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sandeep Saruparia, for the appellants.

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By way of this appeal, the claimant-appellants seek to question the award dated 08.06.2006 made by the Motor Accidents Claims Tribunal, Gulabpura in Claim Case No.67/2003 on its finding of contributory negligence of the vehicular accident victim and on quantification of compensation.

Brief facts of the case noticeable from the impugned award are that in the night intervening 29th/30th March 2003 at about 01:30 a.m., the victim Pukh Raj, about 30 years in age while riding his motor cycle on National Highway No.79 going from Rayla to Vijaynagar rammed into a stationary truck bearing registration No.HR 38 G 5191 that was parked on the road; and succumbed to the injuries received in accident. Narrating the incident and asserting liability in the non-applicants related with the aforesaid truck for causing accident by parking the truck in a dangerous manner without indication on the road where the same could not be spotted in the glare

of lights of on-coming vehicles that led to the deceased crashing into the truck. For quantification of compensation, the claimants, wife, two minor sons and mother of the victim submitted that the victim was working as Vikas Adhikari with Life Insurance Corporation and was earning salary of Rs.8,517.33 per month and was also getting other benefits at Rs.48,000/- per annum and he was making payment of income tax at Rs.16,845/- per annum and there was strong likelihood of enhancement in his earnings in future. The non-applicant No.1, driver-cum-owner of the truck involved in accident remained ex parte and the insurer contested the claim application with the submissions that the accident occurred for the negligence of the deceased Pukhraj himself. Quantum of compensation claimed was also put to contention. The Tribunal framed the following issues for determination of the questions involved in the case:-

> "(1) आया ट्रक चालक अप्रार्थी सं. 1 ने वाहन सं. एच.आर.38 जी 5191 को राष्ट्रीय राजमार्ग 79 पर रायला के समीप दि. 29-3-03 व 30-3-03 की मध्यरात्रि में बिना किसी सूचकयंत्र, बिना इंडिकेटर जलाये वाहन ट्रक को गफलत एवं लापरवाही से सड़क के बीचोबीच खड़ा कर दिया था, जिससे मोटर साईकिल पर सवार मृतक पुखराज उक्त वाहन से टक्कर लगने से मर गया।
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> ---प्रार्थीगण
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> (2) आया प्रार्थीगण विपक्षीगण से संयुक्त एवं पृथक रूप से 71,00,000/- रूपये क्षतिपूर्ति राशि व अन्य राशि प्राप्त करने के अधिकारी हैं ? --प्राथीगण

(3) आया मृतक के पास व विपक्षी सं. 1 के पास वैध एवं प्रभावी लाईसेंस नहीं था ?

--अप्रार्थी सं. 2

(4) अनुतोष ?

The claimants examined Smt. Purnima, wife of the deceased as AW-1 and another witness Jagannath Birwa as AW-2 in relation to the salary certificate of the deceased; and also produced relevant documentary evidence from the police investigation papers. The non-applicant-insurer got examined their Investigator Gaurav Inani as NAW-1 and in documentary produced statements of one Satyanarain Khatik and another Ranjeet Singh, allegedly recorded by the said Investigator, as Ex. D.1 and Ex. D.2.

After hearing the parties and examining the material available on record, the Tribunal noticed that in the First Information Report Ex.1 it was stated that the offending truck was laying stranded on the left hand side of the road and the driver was attempting to repair the same and for it having not got repaired till evening, the driver put lining stones around the truck and then went to Vijay Nagar. The Tribunal also noticed from the site inspection memo Ex.5 that the truck was parked on the left hand side and at about 01:30 a.m. in the night the motor cyclist Pukhraj rammed into the same obviously for his

brisk speed. The Tribunal observed that if the deceased would have taken a little bit of care and caution, the accident would not have occurred and there had been contributory negligence on the part of the deceased even if that was of lesser proportion. On these considerations, the Tribunal put contributory negligence of the deceased at 30%.

On quantification of compensation, the Tribunal noticed that total salary of deceased was Rs.8,517.33 and after deductions he was earning net income at Rs.5,243.82. The Tribunal then observed that deceased was getting further benefits at Rs.48,000/- per annum and he was making payment of income tax at Rs.16,845/-. In view of the age of the deceased at 30 years and his job as Vikas Adhikari with Life Insurance Corporation, the Tribunal considered it appropriate to provide for 25% enhancement towards future prospects on the net earning of the deceased; and hence estimated average income of the deceased at Rs.6,550/- per month and thereby took his average annual income at Rs.78,600/-. Then the Tribunal observed that after deductions the deceased was getting other benefits at Rs.31,000/- per annum and with addition of 25% thereupon too, took such annual benefit at Rs.38,750/-. The Tribunal took net average income of the deceased at Rs.1,17,350/- by addition of the amount of Rs.78,600/- as calculated towards his net salary

income and Rs.38,750/- towards other benefits. The Tribunal then deducted one-third on personal expenditure of the deceased and in this manner took the multiplicand towards loss of dependency at Rs.78,233/-. Then, with reference to the age of the deceased at 30 years, the Tribunal considered it appropriate to apply a multiplier of 18 to assess pecuniary loss at Rs.14,08,194/-; and after allowing another amount of Rs.10,000/- towards funeral expenses and non-pecuniary loss, the Tribunal assessed total loss for the claimants at Rs.14,18,190/- and then deducted 30% on contributory negligence of the deceased and, therefore, held entitled the claimants for compensation in the sum of Rs.9,92,733/- and allowed interest at the rate of 6% per annum from the date of filing of claim application.

Having perused the award, this Court is clearly of opinion that the present appeal does not merit admission.

So far the finding on contribution to the accident is concerned, the same does not appear calling for any interference at the instance of the claimants. On the admitted fact situation of the present case, it is apparent that the deceased while riding his motorcycle rammed into a stationary truck in the night at about 01:30 a.m; and from the material available on record, the fact that driver of the truck put on the indicators of truck and also placed stone indicators on the road

around the truck remains undeniable. Of course, leaving of the truck unattended on the road cannot be countenanced but in the overall circumstances of the case, finding on contribution of the deceased towards accident cannot be said to be wholly unwarranted or unjustified; and the Tribunal cannot be said to have grossly erred against the claimants in putting such contributory negligence at 30%.

Moreover, in the present case, even if for the sake of arguments the finding on contributory negligence of the deceased be ignored, yet it is noticed that the ultimate amount of compensation awarded by the Tribunal in the sum of Rs.9,92,733/- cannot be said to be low or inadequate than that of just compensation admissible in this case. The assessment of pecuniary loss as adopted by the Tribunal has obviously been on the higher side with addition of the amount of benefits other than net salary; and inflating such amount of benefits too with 25% future enhancement. Yet further, even after assessing multiplicand at a higher amount of Rs.78,233/-, the Tribunal has not restricted on application of multiplier and has applied the same on the maximum. The deceased was 30 years in age and his wife has been shown in the age of 27 years and sons in 7 and 5 years respectively. In the overall circumstances of this case, application of multiplier of 18 appears excessive. In this view of the matter, the ultimate

award of compensation as made in this case in the sum of Rs.9,92,733/- cannot be said to be low or inadequate as to warrant interference in appeal.

Thus, even when finding on contributory negligence is removed out, the award of compensation as made in this case does not carry any scope for enhancement. It could readily be noticed that in other event, that is, when the finding on contributory negligence stands, the ultimate amount of compensation shall only be lower than that awarded by the Tribunal. This appeal remains totally meritless.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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